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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

TROY DEVLIN THORNTON,

Defendant and Appellant.

F071626

(Super. Ct. No. F14902504)

OPINION

THE COURT*

APPEAL from an order of the Superior Court of Fresno County. Denise Lee Whitehead, Judge.

Jonathan D. Roberts, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Kathleen A. McKenna and Craig S. Meyers, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Detjen, Acting P.J., Franson, J. and Peña, J.

On June 10, 2014, appellant Troy Devlin Thornton pled no contest to one count of violation of Penal Code section 530.5, subdivision (a),¹ identify theft, and admitted three prior prison term enhancements. (Case No. F14902504.) On July 11, 2014, the trial court sentenced appellant to an aggregate term of six years, consisting of the upper term of three years plus one year for each of the three admitted prison prior enhancements.

On November 26, 2014, appellant filed a petition for resentencing pursuant to Proposition 47 (§ 1170.18) seeking to reduce his felony conviction in case No. F14902504 (the pending case) and case No. F12902103 to misdemeanors. On March 23, 2015, the court granted the request as to case No. F12902103 and denied the request as to case No. F14902504.

On April 27, 2015, appellant filed a second petition for resentencing pursuant to Proposition 47 stating that one of the Madera County cases that was used to enhance his sentence in case No. F14902504 had been reduced to a misdemeanor and requested that his case be recalled. It does not appear that appellant included documentation to support this claim.

The trial court summarily denied the petition as moot, stating, “[r]elief was previously denied on [March 23, 2015],” apparently referring to the denial of the earlier request to reduce petitioner’s 2014 conviction for identity theft (case No. F14902504) to a misdemeanor.

Appellant filed a timely notice of appeal.

On January 27, 2016, appellate counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436.

On October 6, 2016, this court issued the following order:

¹ All further statutory references are to the Penal Code.

“This appeal is currently under review pursuant to *People v. Wende* (1979) 25 Cal.3d 436. The trial court summarily denied appellant’s ‘Petition for Resentencing’ pursuant to Penal Code section 1170.18, filed on April 27, 2015, on the ground ‘Relief was previously denied on March 23, 2015.’ (See CT 20-23.) It appears, however, that the stated basis for the April 27, 2015, petition was not previously considered by the trial court, to wit, whether appellant is entitled to resentencing on Fresno Superior Court case No. F14902504 and/or Fresno Superior Court case No. F12902103 due to the alleged reduction of Madera County Superior Court case No. MCR019455 to a misdemeanor.

“The parties are directed to brief the issue of whether the trial court was required to consider the issue raised by appellant in his April 27, 2015, ‘Petition for Resentencing’ and if so, what relief is appropriate. Briefs may be in letter form. Appellant’s counsel on appeal is directed to file a brief addressing these issues, and any related points, within 30 days from the date of this order. Respondent’s brief addressing these issues, and any related points, is due 30 days after appellant’s brief is filed. Appellant’s reply brief is due 15 days after respondent’s brief is filed.”

Appellant filed a supplemental brief claiming the trial court should have conducted a resentencing hearing in case No. F14902504 to strike appellant’s section 667.5, subdivision (b) prison prior based on the now misdemeanor conviction in case No. MCR019455. Appellant asserts that Proposition 47, which states, “[a]ny felony conviction that is recalled and resentenced under subdivision (b) or designated a misdemeanor under subdivision (g) shall be considered a misdemeanor for all purposes,” with the exception related only to possession of firearms, is fully retroactive. The People, in turn, assert that nothing in section 1170.18 authorizes a trial court to vacate a prior prison term that was used to enhance a sentence imposed on a subsequent ineligible offense.

DISCUSSION

The record reflects the trial court did not rule on appellant’s claim that his Madera County conviction that had been reduced to a misdemeanor may no longer support prior

prison term allegations under section 667.5, subdivision (b). However, it would serve no purpose to remand this case to the trial court to permit the court to do so.

Proposition 47 provides that persons who have completed felony sentences for offenses that would now be misdemeanors under Proposition 47 may file an application with the trial court to have their felony convictions “designated as misdemeanors.” (§ 1170, subd. (f).) Subdivision (k) of section 1170.18, provides in pertinent part: “Any felony conviction that is ... designated as a misdemeanor under subdivision (g) shall be considered a misdemeanor for all purposes, except that such resentencing shall not permit that person to own, possess, or have in his or her custody or control any firearm or prevent his or her conviction under Chapter 2 (commencing with Section 29800) of Division 9 of Title 4 of Part 6.”

We find nothing in the language of Proposition 47 indicating that subdivision (k) of section 1170.18 was intended to have the retroactive collateral consequences urged by appellant. Proposition 47 contains no provision declaring it automatically retroactive.² “Proposition 47 has retroactive effect only to the extent section 1170.18 provides a procedure to petition for reclassification or resentencing.” (*People v. Jones, supra*, at p. 229.) Proposition 47 has no mechanism to permit a trial court to strike an enhancement attached to a noneligible conviction, such as appellant’s identity theft conviction. “Absent express language in section 1170.18 allowing the redesignation, dismissal, or striking of past sentence enhancements, we cannot infer voters intended the

² We note that several cases addressing this issue have been granted review. (E.g., *People v. Jones* (2016) 1 Cal.App.5th 221, review granted Sept. 14, 2016, S235901; *People v. Williams* (2016) 245 Cal.App.4th 458, review granted May 11, 2016, S233539; *People v. Carrea* (2016) 244 Cal.App.4th 966, review granted April 27, 2016, S233011; *People v. Ruff* (2016) 244 Cal.App.4th 935, review granted May 11, 2016, S233201; and *People v. Valenzuela* (2016) 244 Cal.App.4th 692, review granted March 30, 2016, S232900.)

Act to apply retroactively to past sentence enhancements.” (*People v. Jones, supra*, at p. 230.)

DISPOSITION

The order denying appellant’s motion to strike his four prior prison term enhancements (§ 667.5, subd. (b)) is affirmed.

Appellant’s request for judicial notice is granted.